

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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In re:

THE BIG WHALE, LLC,

Case No. 11-23756 JES

Debtor.

Chapter 11

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**OBJECTION OF SECURED CREDITOR WATERSTONE BANK SSB TO  
CONFIRMATION OF THE DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

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WaterStone Bank SSB ("WaterStone"), by its attorneys William F. Bruss and Mark C. Vap, objects to the confirmation of the Debtor's proposed Ch. 11 plan (the "Plan") and in support thereof states as follows:

1. WaterStone is the holder of secured claim against Debtor incorporating 30 separate loans (collectively, the "Loans"; individually, a "Loan") and mortgages on 29 separate parcels of real estate, all as is more particularly set forth in WaterStone's Proof of Claim dated April 27, 2011 and filed with this Court on the same date.
2. The Plan does not comply with the requirements of Ch. 11, as follows:
  - a. WaterStone has not accepted the Plan;
  - b. The Plan proposes to pay the Debtor's outstanding debt on the following terms: "equal monthly installments of principal with fixed interest at the rate of 4.25% per annum

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amortized over 30 years with a 7-year term, with no prepayment penalty” with payments to be made “on the 20th day of the first month after the Effective Date and . . . on the 20th day of each subsequent month until the full principal amount is paid”. The weighted average rate at which interest currently accrues on the Loan is 6.198%. No rate of interest currently accruing on any single Loan is fixed for a period in excess of 5 years much less 7 years. The rate of interest proposed in the Plan does not remotely approximate a market rate of interest available to the Debtor. The mortgage notes evidencing each Loan require monthly payments to be made on the first day of each month. WaterStone proposes the following terms: monthly payments of principal, interest and real estate tax escrow due on the first day of each and every month commencing with the first day of the first month following the Effective Date calculated based on 5 year term, 30 year amortization, and interest at the rate of 4.75% per annum during the first 3 years of the term and 5.25% during the 4<sup>th</sup> and 5<sup>th</sup> years of the term.

- c. WaterStone objects to the Section 3.2 of the Plan and proposes that all unpaid real estate taxes be immediately paid by the Debtor. Unpaid real estate taxes owed on the real property securing the Loans constitute a prior and superior lien to the liens of the mortgages held by WaterStone. The Debtor’s failure to timely pay such taxes is an event of default under the notes and mortgages evidencing the Loans and impairs WaterStone’s security interest in the Property.

Based upon the foregoing, WaterStone requests: (a) that confirmation of the Plan be denied, (b) that a hearing on this objection be scheduled and that the clerk issue notice of the same to all

appropriate parties, and (c) that WaterStone be provided such other and further relief as may be just and equitable.

Dated this 26<sup>th</sup> day of August, 2011.

A handwritten signature in black ink, appearing to read 'William F. Bruss', written over a horizontal line.

William F. Bruss

State Bar No. 1023187

Mark C. Vap

State Bar No. 1046026

Attorneys For WaterStone Bank SSB